

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Arcon Associates, Inc.,)
)
vs.)
)
Archon Group)
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vs.)
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Archon Group)
)
vs.)
)
ARCON Architects, Inc.)
)
vs.)
)
Arcon Architectural)
)
vs.)
)
ArCON Group)
)
vs.)
)
IRT-ARCON)
)

Concurrent Use Proceeding No. 94002126

Hon. Commissioner for Trademarks
Box TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER TO NOTICE OF CONCURRENT USE PROCEEDING

Sir:

Pursuant to 37 C.F.R. § 2.99(d), IRT-ARCON, INC., (hereinafter "IRT") a Nevada corporation, hereby answers the Notice of Concurrent Use proceedings as follows.



11-15-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

commercial waterproofing and commercial roofing installation, repair, testing and inspection services since at least as early as 1995, and uses IRT-Arcon, Inc. in the states of Maryland, Washington, D.C., New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Ohio, Georgia, Alabama, Louisiana, Mississippi, Texas, Florida, Nevada, Michigan and in Puerto Rico.

2. IRT and Arcon Associates, Inc., the owner of U.S. Concurrent Use Application No. 78218850 for the mark ARCON, have entered into an agreement concerning the registration of ARCON, and the territorial use of their respective marks to avoid any likelihood confusion (a copy of the Agreement is attached hereto as Exhibit A).

3. In accordance with the agreement IRT has no objection to Arcon Assoc., Inc. obtaining a concurrent use registration for the mark ARCON, Serial No. 78218850, provided that Michigan is deleted from the area reserved to Arcon Associates, Inc. in International Class 37. The parties agree that Arcon Associates, Inc. will maintain its claim to use of the mark ARCON in Michigan under International Class 42 in the concurrent use registration.

Dated: November 9, 2005

Respectfully submitted,

By 

Robert M. Downey
ROBERT M. DOWNEY, P.A.
601 S. Federal Hwy., #300
Boca Raton, FL 33432
(561) 417-4771
Attorney for IRT-ARCON, INC.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that this Answer (in triplicate) is being deposited with the U.S. Postal Service as First Class Mail, postage prepaid, in an envelope addressed to: Box TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 this 9th day of NOVEMBER, 2005.

Date NOVEMBER 9, 2005


Robert M. Downey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Answer is being mailed to Applicant's counsel, John R. Crossan, Esq. of Chapman and Cutler LLP, 111 W. Monroe St., #1700, Chicago, IL 60603 by U.S. First Class Mail, postage prepaid, this 9th day of NOVEMBER, 2005.

Date NOVEMBER 9, 2005


Robert M. Downey

AGREEMENT

This Agreement is made and entered into effective this 8th day of November, 2005, by and between Arcon Associates, Inc. ("Arcon"), a corporation duly organized and existing under the laws of the state of Illinois, with its principal place of business in Lombard, Illinois; and IRT-Arcon, Inc. ("IRT"), a corporation duly organized and existing under the laws of the state of Nevada, with its principal place of business in Oakland Park, Florida.

WHEREAS, Arcon is the owner of U.S. Application Serial No. 78218850 for a concurrent use registration, filed on February 25, 2003, for the mark ARCON for use in connection with architectural design services and related services, including building construction management and inspection services in International Class 37 in the states of Illinois, Iowa, Wisconsin, Michigan and Indiana;

WHEREAS, Arcon has been using the ARCON mark since at least as early as 1979 in commerce;

WHEREAS, IRT has been using IRT-Arcon, Inc. in commerce in connection with commercial waterproofing and commercial roofing installation, repair, testing and inspection services since at least as early as 1995, and uses IRT-Arcon, Inc. in the states of Michigan, Maryland, Washington, D.C., New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Ohio, Georgia, Alabama, Louisiana, Mississippi, Texas, Florida, Nevada and in Puerto Rico;

EXHIBIT A

WHEREAS, Concurrent Use Proceeding No. 94002126, involving Arcon's above-identified application was instituted under the provisions of Section 2(d) of the Trademark Act of 1946 before the Trademark Trial and Appeal Board; wherein IRT was listed as an excepted user whose time to file an Answer has been extended to November 14, 2005; and

WHEREAS, the parties desire to amicably resolve the controversy between them concerning regional use of their respective marks, the concurrent use registration of Arcon, and to avoid any likelihood of confusion as to the source, origin, sponsorship or affiliation of their respective services;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

1. Arcon is the first to use its ARCON mark in connection with architectural design services and related services, including building construction management and inspection services in Illinois, Iowa, Wisconsin, and Indiana;
2. IRT is the first to use IRT-Arcon, Inc. in connection with commercial waterproofing and commercial roofing installation, repair, testing and inspection services in Maryland, Washington, D.C., New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Ohio, Georgia, Alabama, Louisiana, Mississippi, Texas, Florida, Nevada and Puerto Rico;
3. Regardless of which party first used its respective mark in Michigan, Arcon will exclude commercial waterproofing and commercial roofing

installation, repair, testing and inspection services from its concurrent registration for exclusive rights of ARCON in Michigan;

4. IRT consents to Arcon's use and concurrent registration of ARCON for architectural design services and related services, including building construction management and inspection services in International Class 37 in Illinois, Iowa, Wisconsin, and Indiana;
5. Arcon will not interfere with IRT's continued use of IRT-Arcon, Inc. for commercial waterproofing and commercial roofing installation, repair, testing and inspection services in Michigan, Maryland, Washington, D.C., New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Ohio, Georgia, Alabama, Louisiana, Mississippi, Texas, Florida, Nevada, and in Puerto Rico;
6. IRT will not seek federal or state registration of IRT-Arcon, Inc.;
7. IRT will not use IRT-Arcon, Inc. in Illinois, Iowa, Wisconsin or Indiana;
8. IRT will not use IRT-Arcon, Inc. in connection with services other than commercial waterproofing and commercial roofing installation, repair, testing and inspection services;
9. The parties hereto believe there is no likelihood of confusion or conflict concerning the use of the marks herein involved in the delineated territories, and are unaware of any confusion to date despite years of use by each party of their respective mark;
10. The parties hereto agree to cooperate and consult with one another in good faith, and take whatever action is necessary, should future conditions or

developments suggest to either the possibility that their respective marks might be likely to be confused with one another, all with the view to ensuring that no substantial likelihood of confusion between the parties' marks shall occur.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below.

Dated: 11-08-05

Axon Associates, Inc.

By Patricia C. Teplan
Name PATRICIA A. TEPLAN
Title CFO

Dated: 11/7/05

IKT-Axon, Inc.

By [Signature]
Name [Signature]
Title [Signature]